HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.850 of 2007

Between:

K. Narsaiah … Appellant

And

Government of A.P.,
Social Welfare (LTR-2) Department,
represented by its Secretary,
Secretariat, Hyderabad and four others. …
Respondents

:: J U D G M E N T ::

Counsel for the appellant : Sri Kowturu Vinay Kumar

9th October, 2007

Per G.S. Singhvi, C.J.

This is an appeal for setting aside order dated 2-8-2007 passed by the learned Single Judge in Writ Petition No.18432 of 2001, whereby he declined to interfere with the concurrent finding recorded by respondent Nos.1 to 3 that the sale of land belonging to the tribal namely, Gaddam Butchanna on 12-4-1961 without obtaining permission of the Agent to the Government was void and ordered eviction of the appellant.

The appellant is said to have purchased 6 acres of land comprised in Survey No. 101/1 situated at Vootupally village of Chandrugonda Mandal, Khammam District on 12-4-1961 from Gaddam Butchanna, who was a tribal. In 1982, Gaddam Butchanna filed an application for setting aside the sale on the ground of violation

of the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short 'the Regulation'). The same was dismissed by Special Deputy Collector (Tribal Welfare) Palvancha (respondent No.2) vide his order dated 5-4-1982. The relevant portions of that order are extracted below:

"This case is initiated on the report of the Deputy Tahsildar, LTR in which it is reported that the non-tribal respondent is in the possession of the tribal land in S.No.101 Ac.6-00 of (V) Vootupalli of Kothagudem Tq. in contravention of Regulation 1/59. A show cause notice in Form 'E' as required under Rule 7(2) of the A.P.L.T.R. Rule 1959 has been issued to the respondent.

Both the parties were summoned to attend the Court. The petitioner absent respondent present in the court. He has produced the sale agreement of dt.12.4.1961 and also produced the land revenue receipts w.e.f. 1961-62 on verification of the pahani for the year 1961-62 onwards, the respondent name is found in col. No. 16 petitioner has no right over the suit land. Hence the case is dismissed."

In the meanwhile, Deputy Tahsildar, Kothagudem submitted report dated 22-5-1979 that sale transaction was nullity because prior permission of the Agent had not been obtained as per the requirement of the Agency Tracts Interest and Land Transfer Act, 1917 (for short, 'the 1917 Act'). Thereupon, notice under Rules 7 (1) and 7 (2) issued to the appellant under the Andhra Pradesh Scheduled Areas Land Transfer Regulation Rules, 1969 proposing his eviction from the land in question, but he did not file reply to contest the notice. After considering the documents brought on record, respondent No.2 passed order dated 22-7-1987, whereby he ordered eviction of the persons in possession of the tribal land. The last three paragraphs of that order read as under:

"Perused the pahani extracts for the S.No.101/1 Ac.16.28 Gaddam Buchanna is the Tribal pattedar for the land. Sri Konduri Narasaiah attended the court and deposed that he purchased the land in S.No.191/1 covering an area of Acs.6.00 from the grand father of the petitioner of the petition long back about 1961 or 1962, that the connected papers are not available with him, that he has been cultivating the said land since the date of purchase duly paying the land revenue, that he did not obtain prior permission at the

time of purchase. Sri Sadiam Adi Raju attended the Court and deposed that he purchased the land in S.No.101/1 Acs.1-00 from one Allakunta Pullayya in the year 1982 under sada sale deed. Allakunta Pullayya in turn purchased the land in S.No.101/1 Acs.1.00 from Gaddam Buchanna s/o. Yerrappa who died in the year 1957 under sada sale deed dt.15-3-1960. Allakunta Pullayya sold the land when the case was pending for the same land.

The said sale deed dated 15-3-1960 recorded as Ex. respondent No.2 is bogus one since it was executed after the death of Gaddam Buchanna who said to be died in the year 1959. The sale of the land to Sadiam Adi Raju cannot be believed. S.No.101/1 measuring Ac.16.18 is registered as patta land in the name of Gaddam Buchanna for the years 1962-63, 1964, 1969, 1970, 1970-71, 1983-84 as per Col.II and the respondents were shown as cultivators in Col.16. The transfer of tribal land to the non-tribal is hit by the provisions of the Regulation 1/59 read with the Hyderabad Tenancy Act. Therefore, the tribal petitioner shall be restored to the schedule land after ejecting the respondents or whoever in possession of the land. Therefore, it is proved beyond doubt according to the evidence placed before me that the transfer of immovable property belonging to the tribal was made to the non-tribal in contravention of sub-section (1) of Section 3 as laid down in the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 read with Regulation 1 of 1979 after commencement of the said regulation i.e. after 1-12-1963 and it is null and void.

Accordingly, I, in exercise of the powers conferred under sub-section (2a) of Section 3 of the aforesaid Regulation 1 of 1959, order ejectment against the respondent or whoever in possession of the immovable property described in the schedule given below and direct the scheduled mentioned property be restored to the tribal petitioner or his heirs under the cover of Panchanama."

Koduru Narasaiah and seven others, who were parties in the case decided by respondent No.2, filed appeal under Clause 3(3) of the Regulation. The same was dismissed by the Agent to the Government, Khammam vide his order dated 18-1-1989. The revision preferred by them was dismissed by the State Government vide order dated 30-7-2001. The State Government noted that the names of the petitioners had been interpolated in the pahanis with a different ink and no valid documentary evidence was produced to decide their possession over the tribal land.

The learned Single Judge noted that sale dated 12-4-1961 effected without obtaining permission of the Agent was null and void and held that the competent authority did not commit any illegality by refusing to recognise the same. The operative portion of the order of the learned Single Judge reads as under:

> "There is no dispute that an extent of Acs. 16.28 gts in Survey No. 101/1 was owned by Butchanna, who is a tribal pattadar. That being the case, in the absence of previous consent of the Agent to Government under Section 4 (1) of Act I of 1917, permitting such sale, the sale – even if it is true – in favour of the petitioner on 12.4.1961 is void. As per Section 10 (1) (b) of Regulation I of 1959, unless sale of immovable property, prior to coming into force of Regulation I of 1959, is valid under Act I of 1917 or any State Law, the same cannot be upheld. In this case all the authorities have correctly appreciated the facts and law and the impugned order does not suffer from any error apparent on the face of record."

The only point urged by Sri Kowturu Vinay Kumar, learned counsel for the appellant is that while declining to interfere with the orders under challenge, the learned Single Judge did not give due weightage to order dated 5-4-1982 passed by Special Deputy Collector (Tribal Welfare), Palvancha in Case No.974/70/Kgm whereby the officer dismissed the application filed by Gaddam Butchanna.

We have carefully gone through order dated 5-4-1982 and find that while dismissing the complaint lodged by Gaddam Butchanna, the officer concerned did not record any finding that sale deed dated 12-4-1961 has been effected after seeking permission from the Agent as per the requirement of the 1917 Act. Therefore, the view taken by the learned Single Judge on the legality of the sale transaction is correct and we do not find any justification to interfere with the discretion exercised by him not to entertain the appellant's challenge to the order of eviction.

In the result, the appeal is dismissed.

G.S. SINGHVI, C.J.

9th October, 2007

C.V. NAGARJUNA REDDY, J.

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